

law guaranteed under that Amendment. The question for decision in that case, as stated in the forepart of the opinion (p. 201), was, "whether a corporation organized under the laws of Kentucky is subject to taxation upon its tangible personal property, *permanently located in other States* and employed there in the prosecution of its business." The property in question was railroad cars, a kind of movables obviously capable of acquiring a permanent location other than that of the owner. The judgment of the court was that the taxation of such property so *permanently located* elsewhere by the law of the domicile of the owner would be a denial of due process of law and beyond the power of the State. The principle was not a new one, and was declared to rest upon repeated judgments of this court, the cases of *Railroad Co. v. Jackson*, 7 Wallace, 262; *Delaware &c. Railroad v. Pennsylvania*, 198 U. S. 341; *Louisville &c. Ferry Co. v. Kentucky*, 188 U. S. 385, being cited as precedents. That judgment did not deny to the State of the domicile of the owner power to tax tangibles which had not acquired an actual situs elsewhere.

The case presented no such question and the opinion does not refer to the numerous cases holding that the taxable situs of ships engaged in foreign or interstate commerce was that of the owner unless an actual situs had been elsewhere acquired. That no such consequence was attached to the judgment or opinion is evidenced from the opinion in *Ayer & Lord Tie Company v. Kentucky*, announced at the same term and concurred in by Mr. Justice Brown, who wrote the opinion in the *Transit Company* case, in which case it was distinctly affirmed that vessels were subject to taxation only at the domicile of the owner, unless they had acquired an actual situs in another jurisdiction.

To lay down a principle that vessel property has no situs for purposes of taxation other than that of actual permanent location, would introduce elements of uncertainty

concerning the situs of such property not presented by other kinds of movable property.

It is one thing to find that a movable, such as a railway car, a stock of merchandise, or a herd of cattle, has become a part of the permanent mass of property in a particular State, and quite another to attribute to a sea-going ship an actual situs at any particular port into which it goes for supplies or repairs or for the purpose of taking on or discharging cargo or passengers. A ship is not intended to stay in port, but to navigate the seas. Its stay in port is a mere incident of its voyage, and to determine that it has acquired an actual situs in one port rather than another would involve such grave uncertainty as to result often in an entire escape from taxation. This court, in *Hays v. Pacific Mail Steamship Co.*, *supra*, said upon this subject (p. 599), "whether the vessel, leaving her home port for trade and commerce, visits, in the course of her voyage or business, several ports, or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the State, and liable to taxation at one port than at the others. She is within the jurisdiction of all or any one of them temporarily, and for a purpose wholly excluding the idea of permanently abiding in the State, or changing her home port."

In *People ex rel. Pacific Mail Steamship Company v. Commissioners of Taxes*, 58 N. Y. 242, 246, the New York court said, concerning the necessity of determining the taxable situs of such ships by some more certain standard than by the ports they make and the time they remain, that, "being in port is only a necessary incident in their proper employment. They are not built to be in port, but upon the sea. To determine their *situs*, for purposes of taxation, by their longer or shorter stay in a particular port, or by their more or less frequent resort to it, would intro-

duce perpetual uncertainty; it would, practically, subject them to taxation in every port, or exempt them in all."

The difficulties attendant upon the taxation of intangible property elsewhere than at the domicile of the owner have largely preserved the domicile of the owner as the proper situs for purposes of taxation.

The legality of a tax is not to be measured by the benefit received by the taxpayer, although equality of burdens be the general standard sought to be attained. Protection and taxation are not necessarily correlative obligations, nor precise equality of burden attainable, however desirable. The taxing power is one which may be interfered with upon grounds of unjustness only when there has been such flagrant abuse as may be remedied by some affirmative principle of constitutional law.

Take the case in hand. The Southern Pacific Company is a corporation having much extraordinary power. It only exists and exercises this power by virtue of the law of Kentucky. By the law of its being it resides in Kentucky and there maintains its general office and there holds its corporate meetings. To say that the protection which the corporation receives from the State of its origin and domicile affords no basis for imposing taxes upon tangibles which have not acquired an actual situs under some other jurisdiction is not supportable upon grounds of either abstract justice or concrete law. What is the protection accorded these vessels at any of the ports to which they temporarily go for purposes of business? What protection do they receive from the State or city of New York other than that accorded to every other ship which visits that port, foreign or domestic, for repairs, supplies or other business? Referring to a like claim of protection this court, in *Hays v. Pacific Mail Steamship Co.*, 17 Howard, 596, 599, said: "And so far as respects the ports and harbors within the United States, they are entered and cargoes discharged or laden on board, independently of

any control over them, except as it respects such municipal and sanitary regulations of the local authorities as are not inconsistent with the Constitution and laws of the General Government, to which belongs the regulation of commerce with foreign nations and between the States."

It has also been urged that the situs of the domicile of the owner of a ship cannot be the situs for purposes of taxation when it appears that the ship cannot go to that situs, and it is here said that the ships of the Southern Pacific Company cannot visit any port in the State of Kentucky. The fact is not shown, nor is it conceded. The State has a port on the Mississippi, a great stream, up which national ships of war have at times gone as high or higher than the southern boundary of the State of Kentucky. But the test proposed is not one for which there is any authority, and would but introduce another grave element of uncertainty dependent upon the draught of the ships and the depth of the water. Such a test might exclude from taxation ships, such great ships as the Olympic, or the Lusitania, while smaller craft might meet the proposed standard.

The facts which have been relied upon to show an actual situs of these ships in the port of New York have been already sufficiently stated. They fall short of the facts relied upon for a like purpose in *Hays v. Pacific Mail Steamship Company*; *St. Louis v. Ferry Co.*, and *Morgan v. Parham*, already cited, where the judgments were that they were insufficient to create a taxable situs other than that of the owner. The facts shown by no means bring the case under the authority of *Old Dominion Steamship Company v. Virginia*, where it was held that the ships had acquired an actual situs.

We find no reason for disturbing the judgment of the Court of Appeals of the Commonwealth of Kentucky, and it is therefore,

*Affirmed.*